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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ANNE B. ZIPES, et al.,

Petitioners

vs. No. 78-1545

TRANS WORLD AIRLINES, INC.,

Respondent,

TRANS WORLD AIRLINES, INC.,

Cross-Petitioner,

vs. No. 78-1549

ANNE B. ZIPES, et al.,

Cross-Respondents,

INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS,

Petitioner,

vs. No. 80-951

TRANS WORLD AIRLINES, INC. and ANNE B. ZIPES, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

RESPONSE OF THE PLAINTIFF CLASS TO TRANS WORLD AIRLINES MOTION TO LIMIT REVIEW (ETC.) AND MOTIONS IN THE ALTERNATIVE THERETO

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PETITION FOR CERTIORARI IN NO. 78-1545 FILED APRIL 10, 1979, IN NO. 78-1549 ON APRIL 11, 1979, AND IN NO. 80-951 ON DECEMBER 12, 1980. ALL PETITIONS WERE GRANTED MARCH 9, 1981.

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Anne B. Zipes, et al., individually and as representatives of the Plaintiff Class[1], have no objection to the motion of TWA to limit review (entitled Motion By Trans World Airlines, Inc., To Limit Review In No. 80-951 To Issue Of Seniority And Treat Nos. 78-1545 And 78-1549 As Moot). However, the Plaintiff Class believes that this response is necessary in order to clarify the issues and to present motions in the alternative, in the event that TWA's motion is denied.

Granting either TWA's motion or the alternative relief requested herein will not restrict the legal issues which are involved in No. 80-951. It will, however, reduce the number of parties and facilitate implementation of the settlement agreement between TWA and the plaintiff class. If, however, TWA's motion is denied, this Court should enter one of the orders proposed herein, the essential reason for which is the absence of any case or controversy between TWA and the Plaintiff Class under the U.S. CONST., art. 3, § 2, clause 1.

Both TWA and the Plaintiff Class desire to implement the settlement agreement of June 1979. No aspect of that settlement will affect any of the rights of the Petitioner in Dock. No. 80-951 (the Union).

The Settlement Agreement was entered into shortly after the plaintiffs and TWA filed cross petitions for certiorari to review the 1978 decision of the Seventh Circuit, *In re Consolidated Pretrial Proceedings in the Airline Cases,* 582 F.2d 1142, which (1) affirmed a summary judgment on the merits in favor of the plaintiffs and (2) held that the claims of the members of Subclass B were jurisdictionally defective. The Settlement Agreement of June 1979 put those issues to rest.

The Settlement Agreement provided for the payment of $3,000,000 to the class, the right to reemployment and restoration of *company* seniority (which affects pay, vacations, etc.), all

[1] These class representatives are the petitioners in Dock. No. 78-1545, and respondents in Nos. 78-1549 and 80-951.

of which are of not interest to the Union.[2] The Union's only interests regard *competitive* seniority (which affects bidding rights on routes, preferences in the event of layoffs, etc.).

The Settlement Agreement provided that its terms would be implemented as soon as the settlement approval order became final. Finality was defined as the occurrence of events which rendered the settlement as being "no longer subject to review or modification".

The Settlement Agreement did not purport to grant competitive seniority to reemployed class members. The Settlement Agreement merely recognized that competitive seniority was a matter which could only be decided by the District Court, in an adversarial proceeding in which the Union would participate. The District Court approved the settlement under Rule 23(e), F.R.C.P. In a separate Order, the District Court granted competitive seniority.

One of the Union's points was that the grant of competitive seniority was improper because of the alleged lack of jurisdiction. The Union filed notices of appeal from both orders.[3] However, it is abundantly clear that the Union's jurisdictional challenge to the order which approved the Settlement Agreement goes not to the settlement, *qua settlement,* but only as the underpinning to the order which granted competitive seniority.

Thus, the Settlement Agreement has already become final and enforceable and both TWA and the plaintiff class are now bound to comply with the provision therein, which states:

> "The parties shall jointly file in the United States Supreme Court a motion and stipulation that the ... writs of

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[2] The Union repeatedly has expressly disavowed any interest in the provisions of the Settlement Agreement, by its statements in the District Court, its briefs in the Seventh Circuit and in this Court. Indeed, the Union has no standing to quarrel with any of the provisions of the Settlement Agreement.

[3] No other class member, person or party objected to or appealed from approval of the settlement.

certiorari . . . be dismissed immediately after [the settlement approval becomes final]."

It is clear that, as between TWA and the plaintiff class, nothing can possibly happen in this Court which might modify or invalidate the settlement. Even if this Court were to decide that the District Court was lacking jurisdiction over the claims of Subclass B, it would not affect the validity and binding effect of the settlement, for the simple reason that the pivotal issue of whether the timely filing of an EEOC charge affects jurisdiction has been settled and compromised.

In short, the controversies in Dock. Nos. 78-1545 and 78-1549 have *already* become moot and TWA has a contractual obligation to join with the class in stipulating to dismiss those two writs of certiorari. If TWA refuses to so stipulate, it should be ordered to do so.

Notwithstanding this obvious posture of the mutual rights and obligations of TWA and the class, the granting of TWA's motion will cause no harm to any of the parties in the three consolidated cases. Importantly, the granting of the motion and/or dismissal of those two writs will still leave before this Court all of the issues regarding whether compliance with the EEOC time-filing requirements is "jurisdictional".

But if, on the other hand, TWA's motion is denied, it will prolong litigation between TWA and the class in a case which has been settled—unless the class obtains an order from the District Court compelling specific performance of TWA's promise to join in dismissing these two writs. Whether that relief would be forthcoming in the District Court is uncertain. In the meantime, the class members are being denied the benefit of their bargain. For almost two years, they have been denied the use of the money and their rights to return to work.

Moreover, if this Court holds that the District Court lacks jurisdiction, TWA will undoubtedly disavow the Settlement

Agreement as being unenforceable. Indeed, in that event TWA may not need affirmatively to make this argument because the class may then perforce be deprived of the necessary forum in which to enforce the Settlement Agreement, no matter what position TWA then adopts.

Accordingly, the plaintiff class suggests to this Court, in the alternative, that:

1. TWA's motion be granted, or

2. TWA and the plaintiff class be ordered to stipulate to dismiss the writs in Dock. Nos. 78-1545 and 78-1549, or

3. This Court itself dismiss the aforesaid writs as being moot.

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